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**ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

In the Matter of the Escrow Agent License of:

No. 09F-BD011-BNK

**FINANCIAL TITLE COMPANY**

5650 Sunrise Blvd., Suite 150  
Citrus Heights, CA 95610

**ORDER OF SUMMARY SUSPENSION  
AND NOTICE OF HEARING TO  
REVOKE**

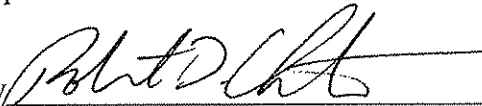
Respondent.

The Arizona Department of Financial Institutions (the "Department") hereby finds that Financial Title Company ("Respondent") has violated the provisions of the Arizona Revised Statutes ("A.R.S."), Title 6 as set forth below and finds that the public health, safety and welfare require emergency action pursuant to A.R.S. §§ 6-817 and 41-1092.11(B).

**THEREFORE, IT IS ORDERED** to summarily suspend the Arizona escrow agent license held by Respondent, effective immediately, pending the proceedings for revocation or other action commenced this date. **This suspension is effective immediately.**

EFFECTIVE this 12 day of August, 2008.

Felecia A. Rotellini  
Superintendent of Financial Institutions

By   
Robert D. Charlton  
Assistant Superintendent of Financial Institutions

**NOTICE OF HEARING AND COMPLAINT**

PLEASE TAKE NOTICE that, pursuant to Arizona Revised Statutes ("A.R.S.") §§ 6-138, and 41-1092.02, the above-captioned matter will be heard through the Office of Administrative Hearings, an independent agency, and is scheduled for October 10, 2008, at 9:00 a.m., at the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona, (602) 542-9826 (the "Hearing").

The purpose of the Hearing is: (1) to determine whether grounds exist to suspend or revoke Respondent's escrow agent license; (2) to order any other remedy necessary or proper for the

1 enforcement of statutes and rules regulating escrow agents in Arizona pursuant to A.R.S. §§ 6-123  
2 and 6-131; and (3) to impose a civil money penalty pursuant to A.R.S. § 6-132.

3 Pursuant to A.R.S. § 6-138, the Superintendent of Financial Institutions for the State of  
4 Arizona (the "Superintendent") delegates the authority vested in the Superintendent, whether implied  
5 or expressed, to the Director of the Office of Administrative Hearings or the director's designee to  
6 preside over the Hearing as the Administrative Law Judge, to make written recommendations to the  
7 Superintendent consisting of proposed Findings of Fact, Conclusions of Law, and Order. The Office  
8 of Administrative Hearings has designated Diane Mihalsky, at the address and phone number listed  
9 above, as the Administrative Law Judge for these proceedings. Pursuant to Arizona Administrative  
10 Code ("A.A.C.") Rule 2-19-104 and A.R.S. §§ 41-1092.01(H)(1) and 41-1092.08, the  
11 Superintendent retains authority to enter orders granting a stay, orders on motions for rehearing, final  
12 decisions pursuant to A.R.S. § 41-1092.08 or other order or process which the Administrative Law  
13 Judge is specifically prohibited from entering.

14 ~~Motions to continue this matter shall be made in writing to the Administrative Law Judge not~~  
15 **less than fifteen (15) days** prior to the date set for the Hearing. A copy of any motion to continue  
16 shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of  
17 Administrative Hearings.

18 A.R.S. § 41-1092.07 entitles any person affected by this Hearing to appear in person and by  
19 counsel, or to proceed without counsel when submitting evidence, to have a reasonable opportunity  
20 to inspect all documentary evidence, to cross-examine witnesses, to present evidence and witnesses  
21 in support of his/her interests, and to have subpoenas issued by the Administrative Law Judge to  
22 compel attendance of witnesses and production of evidence. Pursuant to A.R.S. § 41-1092.07(B),  
23 any person may appear on his or her own behalf or by counsel.

24 Pursuant to A.R.S. § 41-1092.07(E), a clear and accurate record of the proceedings will be  
25 made by a court reporter or by electronic means. Any party that requests a transcript of the  
26 proceedings shall pay the cost of the transcript for the court reporter or other transcriber.

1 Questions concerning issues raised in this Notice of Hearing should be directed to Assistant  
2 Attorney General Craig A. Raby, (602) 542-8889, 1275 West Washington, Phoenix, Arizona 85007.

3 **NOTICE OF APPLICABLE RULES**

4 The hearing will be conducted pursuant to A.A.C. R20-4-1201 through R20-4-1220 and the  
5 rules governing procedures before the Office of Administrative Hearings, A.A.C. R2-19-101 through  
6 R2-19-122. A copy of these rules is enclosed.

7 Pursuant to A.A.C. R20-4-1209, Respondent shall file a written answer **within twenty (20)**  
8 **days** after issuance of this Notice of Hearing. The answer shall briefly state the Respondent's  
9 position or defense and shall specifically admit or deny each of the assertions contained in this  
10 Notice of Hearing. If the answering Respondent is without or are unable to reasonably obtain  
11 knowledge or information sufficient to form a belief as to the truth of an assertion, Respondent shall  
12 so state, which shall have the effect of a denial. Any assertion not denied is deemed admitted.  
13 When Respondent intends to deny only a part or a qualification of an assertion, or to qualify an  
14 ~~assertion, Respondent shall expressly admit so much of it as is true and shall deny the remainder.~~  
15 Any defense not raised in the answer is deemed waived.

16 **If a timely answer is not filed, pursuant to A.A.C. R20-4-1209(D), Respondent will be**  
17 **deemed in default** and the Superintendent may deem the findings in this Notice of Hearing as true  
18 and admitted and the Superintendent may take whatever action is appropriate, including (1)  
19 suspension or revocation of Respondent's license; (2) any other remedy necessary or proper for the  
20 enforcement of statutes and rules regulating escrow agents in Arizona pursuant to A.R.S. §§ 6-123  
21 and 6-131; and (3) imposing a civil money penalty pursuant to A.R.S. § 6-132.

22 Respondent's answer shall be mailed or delivered to the Arizona Department of Financial  
23 Institutions, 2910 North 44th Street, Suite 310, Phoenix, Arizona 85018, with a copy mailed or  
24 delivered to the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix,  
25 Arizona 85007 and to Assistant Attorney General Craig A. Raby, Consumer Protection & Advocacy  
26 Section, Attorney General's Office, 1275 West Washington, Phoenix, Arizona 85007.

**Persons with disabilities may request reasonable accommodations such as interpreters, alternative formats, or assistance with physical accessibility.** Requests for special accommodations must be made as early as possible to allow time to arrange the accommodations. If accommodations are required, call the Office of Administrative Hearings at (602) 542-9826.

## **FINDINGS**

1. Respondent Financial Title Company ("Financial Title") is a California corporation, and a wholly-owned subsidiary of Mercury Companies, Inc. ("Mercury"), a Colorado corporation. Financial Title is authorized to transact business in Arizona as an escrow agent, license number EA 0907018, within the meaning of A.R.S. §§ 6-801, *et seq.* The nature of Respondent's business is that of engaging in or carrying on the escrow business or acting in the capacity of an escrow agent within the meaning of A.R.S. § 6-801(6).

2. Ivy Anderson was the President of Financial Title.

3. On or about July 29, 2008, all business operations of Financial Title were shut down, and its employees laid off, when Mercury, its parent company, announced the closing of all of its title companies in Arizona, Texas, and California, due to economic difficulties.

4. Pursuant to A.R.S. § 6-832, Financial Title 's audited financial statements for the year ended December 31, 2007, were due to be filed with the Superintendent by April 30, 2008.

5. On June 16, 2008, the Department received Financial Title's audited financial statements for the year ended December 31, 2007, a total of forty six (46) days past the deadline of April 30, 2008.

6. Financial Title failed to timely file with the Superintendent its audited financial statements for the year ended December 31, 2007, as statutorily required, which constitutes grounds for assessment of a fee of twenty five dollars (\$25.00) for each day Respondent's audited financial statements were not received by the Department.

7. On August 4, 2008, the Department sent a letter to Financial Title requesting that it provide to the Department, no later than Monday, August 11, 2008, the following:

1. A certified copy of the resolution of the escrow agent's board of directors or a verified statement indicating its intent to surrender the escrow agent license.
2. A copy of the final reconciliation for all escrow bank accounts including copies of the reconciliation form, bank statement, outstanding checks list, deposit in transit list, trial balance of escrows and any adjusting entries.
3. A list of the escrow bank accounts transferred to First American Title Insurance Company with copies of the checks, evidencing the transfer of the escrow funds to First American Title Insurance Company.
4. A list of the open and closed escrow account files transferred to First American Title Insurance Company.
5. A statement indicating that no escrow business has been accepted since the effective closing date (July 29, 2008).
6. A copy of the letter, advising customers of the transfer of escrow accounts to the First American Title Insurance Company, sent to the parties of the open escrows.
7. The original escrow agent license.
8. A report of the arrangements made for storage of the closed escrow files. This information should include a list of all the files placed in storage, the location of the files and the name of the person to contact for retrieval.
9. If applicable, final payment to the Arizona Escrow Recovery fund for the last quarter.
10. Annual audited financial statements for the year ended December 31, 2007, and the most recent semi-annual financial statements.
11. The Assignment of Transfer of Escrow Files and Related Banking Information and Authorization to Access Office Locations and the Assignment of Escrow Accounts signed and dated by First American Title Insurance Company.

8. To date, Financial Title has failed to provide to the Department all records, documents, information and reports as required by the Department's letter of August 4, 2008, thereby making it impossible for the Department to protect the public.

...

9. The conduct described above constitutes an immediate threat to the public health, safety, and welfare, warranting immediate suspension of Respondent's escrow agent license because Respondent is licensed in Arizona as an escrow agent while failing to conduct business in accordance with the law, and has violated Title 6, Chapter 7 and the rules relating thereto.

10. The conduct described above constitutes grounds for revocation of Respondent's escrow agent license.

**LAW**

1. Pursuant to A.R.S. Title 6, Chapter 7, the Superintendent has the authority and duty to regulate all persons engaged in the escrow agent business and with the enforcement of statutes, rules, and regulations relating to escrow agents.

2. By the conduct set forth above in the Complaint, Financial Title has violated the following statutes and rules governing escrow agents:

a. A.R.S. §§ 6-832(A) and (B) by failing to file its audited financial statements for the year ended December 31, 2007 with the Superintendent on April 30, 2008, as required; and

b. A.R.S. §§ 6-123(3) and 6-837(B) by failing to provide to the Department all information requested by the Department's letter August 4, 2008.

3. Respondent has failed to furnish information as required by the Superintendent under A.R.S. Title 6, Chapter 7 and the rules related to Chapter 7, which is a ground for the suspension or revocation of Respondent's escrow agent license, pursuant to A.R.S. § 6-817(8).

4. Respondent has failed to conduct business in accordance with law or has violated A.R.S. Title 6, Chapter 7 and the rules related to Chapter 7, which are grounds for the suspension or revocation of Respondent's escrow agent license, pursuant to A.R.S. § 6-817(A)(2).

5. The violations, set forth above, constitute grounds for the pursuit of any other remedy necessary or proper for the enforcement of statutes and rules regulating escrow agents in Arizona pursuant to A.R.S. §§ 6-123 and 6-131.

1           6.       Pursuant to A.R.S. § 6-132, Respondent's violations of the aforementioned statutes  
2 are grounds for the assessment of a civil penalty of not more than five thousand dollars (\$5,000.00)  
3 for each violation for each day.


4           7.       Pursuant to A.R.S. § 6-816(B), Respondent's violation of A.R.S. §§ 6-832(A) and  
5 (B) are grounds for the assessment of a late fee of one thousand one hundred fifty dollars  
6 (\$1,150.00), constituting a fee of twenty five dollars (\$25.00) for each day Respondent's audited  
7 financial statements for the year ended December 31, 2007 were filed late, which totaled forty six  
8 (46) days past the April 30, 2008 deadline.

9           8.       Pursuant to A.R.S. § 6-125(B)(4), Respondent shall be assessed an examination fee  
10 at a rate set by the Superintendent, not to exceed sixty five dollars (\$65.00) per hour for each  
11 examiner employed at the examination of Financial Title, conducted pursuant to A.R.S.  
12 § 6-122(B)(3).

13           WHEREFORE, if after a hearing, the Superintendent makes a finding of one or more of the  
14 ~~above described violations or other grounds for disciplinary action, the Superintendent may:~~ (1)  
15 suspend or revoke Financial Title's escrow agent license pursuant to A.R.S. § 6-817; (2) order any  
16 other remedy necessary or proper for the enforcement of statutes and rules regulating escrow agents  
17 in Arizona under A.R.S. §§ 6-123 and 6-131; and (3) impose a civil penalty pursuant to A.R.S.  
18 § 6-132.

19           DATED this 12 day of August, 2008.

20                               Felecia A. Rotellini  
21                               Superintendent of Financial Institutions

22                               By   
23                               Robert D. Charlton  
24                               Assistant Superintendent of Financial Institutions

25   ...

26   ...

1 ORIGINAL of the foregoing filed this 12<sup>th</sup>  
2 day of August, 2008, in the office of:

3 Felecia A. Rotellini  
4 Superintendent of Financial Institutions  
5 Arizona Department of Financial Institutions  
6 ATTN: Susan Longo  
7 2910 N. 44th Street, Suite 310  
8 Phoenix, AZ 85018

9 COPY mailed/delivered same date to:

10 Diane Mihalsky, Administrative Law Judge  
11 Office of the Administrative Hearings  
12 1400 West Washington, Suite 101  
13 Phoenix, AZ 85007

14 Craig A. Raby, Assistant Attorney General  
15 Attorney General's Office  
16 1275 West Washington  
17 Phoenix, AZ 85007

18 Robert D. Charlton, Assistant Superintendent  
19 Richard Fergus, Licensing Manager  
20 Peggy Prill, Senior Examiner  
21 Arizona Department of Financial Institutions  
22 2910 N. 44th Street, Suite 310  
23 Phoenix, AZ 85018

24 AND COPY MAILED SAME DATE, by  
25 Certified Mail, Return Receipt Requested to:

26 Financial Title Company  
c/o Ivy Anderson, President  
5650 Sunrise Blvd., Suite 150  
Citrus Heights, CA 95610

CT Corporation System  
Statutory Agent for Financial Title Company  
2394 E. Camelback Road  
Phoenix, AZ 85016

Jerrold G. Hauptman, Owner  
Mercury Companies, Inc.  
1515 Arapaho Street  
Tower 1, Suite 1400  
Denver, CO 80202

Susan Longo  
265580; PHX-AGN-2008-0520